

Recording Requested by and
When Recorded, Return to:

Jean G. Fujii
2081 Tapscott Avenue
El Cerrito, California 94530

DECLARATION OF EASEMENTS AND COVENANTS

THIS DECLARATION OF EASEMENTS AND COVENANTS (this "**Declaration**") is entered into as of this _____th day of April 2019 by ALBERT F. NAWATA, TRUSTEE OF THE NAWATA FAMILY LIVING TRUST, 1993, ELAINE KAYKO REGAN, TRUSTEE OF THE NAWATA FAMILY LIVING TRUST, 1993 and JEAN G. FUJII, TRUSTEE OF THE NAWATA FAMILY LIVING TRUST, 1993 (together, "**Declarant**") with reference to the following facts:

Recitals:

A. Declarant is the owner of the two (2) separate and abutting land parcels developed for residential use purposes and commonly known as 3420 Carlson Boulevard (the "**Carlson Blvd. Property**") and 9955 San Pablo Ave. (the "**San Pablo Ave. Property**"), respectively, each located in the City of El Cerrito, County of Contra Costa, State of California, and each as more completely described in Exhibit A and Exhibit B, respectively. Hereinafter, the subject land parcels are variously referred to individually as a "**Lot**" and together as the "**Lots**."

B. Declarant intends to impose on the Lots covenants, easements, and restrictions under a general plan for the use of the Lots as described in this Declaration for the mutual benefit of such Lots and the owners thereof as described herein.

C. Declarant further intends hereby to grant and reserve easements for driveway access, ingress and egress to and from the Carlson Blvd. Property parking area, and for incidental purposes, in favor of the Carlson Blvd. Property and the San Pablo Ave. Property on the terms and conditions herein.

NOW, THEREFORE, Declarant hereby declares that the real property described herein is and shall be encumbered, used, occupied, improved and conveyed subject to the following limitations, restrictions, easements, covenants, equitable servitudes, and conditions for the benefit of the Lots and the owners of each of Lot. All the limitations, restrictions, easements, covenants, and servitudes herein, shall run with the land in perpetuity and shall be binding upon Declarant and Declarant's successors and assigns, and all parties having or acquiring any right, title or interest in or to any lot or parcel in the Project.

1. **ESTABLISHMENT OF EASEMENTS, COVENANTS, AND RESTRICTIONS.** Declarant hereby declares and establishes for the Lots and their owners, including Declarant and Declarant's successors and assigns, and by acceptance of a deed conveying title to any Lot, each owner thereof acknowledges and accepts the easements, equitable servitudes, covenants, and restrictions described in Section 2 and Section 3 below, including the benefits and burdens of such easements as described in this Declaration, and acknowledges that the easements and covenants contained in this

Declaration are mutually beneficial to the Lots and the owners of each of them, and, further, that such easements and covenants create substantial financial and aesthetic value for the Lots. The easements, equitable servitudes, covenants, and restrictions described herein are intended to become effective upon the first transfer of title exclusively for a single Lot by either Declarant or Declarant's successors and assigns to a purchaser thereof for value.

2. GRANT OF EASEMENTS.

2.1 Grant of Easements. Declarant hereby grants, conveys and reserves a non-exclusive easement over and across a portion of the Carlson Blvd. Property for purposes of vehicular and pedestrian access and ingress and egress to and from the parking area at the rear of the San Pablo Ave. Property, and for incidental purposes relating thereto, for the benefit of the owner and occupants of the San Pablo Ave. Property, including Declarant and Declarant's successors and assigns, as depicted in Exhibit C and as more completely described in Exhibit D.

The location of such ingress, egress and access easements described above is hereinafter referred to collectively as the "Driveway Area". The easements described in Section 2.1 are hereinafter referred to as the "Driveway Easements".)

3. COVENANTS AND EQUITABLE SERVITUDES AFFECTING EASEMENTS.

3.1 By acceptance of a deed to either Lot, the owner of each Lot further covenants and agrees, for himself and his heirs, successors and assigns, as follows:

(a) Use, Maintenance and Expenses for Driveway Area. Notwithstanding any statutory, administrative, or common law rights or entitlements to the contrary, existing either as of the date of this Declaration or any time thereafter,

(i) that the owner of the San Pablo Ave. Property, and the family, guests, tenants, and invitees of such owner, is hereby permitted to use the Driveway Area exclusively for the purposes described in Section 2.1 above and in accordance with and subject to all other terms and provisions of this Declaration, and shall have co-equal right to use the Driveway Area as the owner of the other Lot; and

(ii) that no owner of a Lot, or the family or tenants of any owner, shall be permitted to modify, alter, or change in any manner whatsoever any portion or element of the Driveway Area except to repair, maintain, or replace the same or any portion thereof in accordance with this Declaration; and

(iv) that no owner of a Lot, or the family or tenants of any owner, shall be permitted to construct, build, or erect or maintain (or suffer the same to occur) any improvements or landscaping whatsoever in the Driveway Area or any portion thereof; and

(v) that no owner of a Lot, or the family or tenants of any owner, shall be permitted to block, obstruct or otherwise interfere with access to and use of the Driveway Area by the owner or occupants of the other Lot; and

(vi) that no owner of a Lot, or the family or tenants of any owner, shall be permitted to store or maintain any personal property or equipment on, within, or across the Driveway Area or any portion thereof, including, without limitation, machinery, recreational equipment, trash or recycling bins and containers, and all other personal property and equipment; and

(vii) the owner of each Lot shall jointly and equally (A) maintain, repair and replace, as necessary or appropriate, the Driveway Area and the improvements therein, and (B) contribute to and pay all costs and expenses for the maintenance, repair and replacement of the Driveway Area and the improvements therein; and

(viii) that the owner of each Lot shall be solely responsible to (A) pay the applicable real property taxes separately assessed to his or her Lot, including the portion of such Lot that is encumbered by the Easements, and (B) to obtain and maintain a separate policy or policies of casualty and liability insurance covering such owner's Lot, including the portion thereof that is encumbered by the Easements.

(b) Indemnity. The owner of the San Pablo Ave. Property shall indemnify and hold the owner of the 3420 Carlson Blvd., and the members, officers, directors, employees, agents, representatives, successors and assigns of such owner, harmless from any and all liability for bodily injury, death and property damage arising from the use, maintenance, and/or repair of the Driveway Area and the improvements therein by the owner of the San Pablo Ave. Property or the family or tenants of such owner. This indemnity shall pass to the successors, heirs, and assigns on transfer of title to the Lots and shall survive the expiration or termination of this Declaration.

4. **APPURTENANT EASEMENTS; RUNS WITH LAND.** The Driveway Easements are appurtenant to and run with the land of the Carlson Blvd. Property and the San Pablo Ave. Property. Each owner of each property and the family and tenants of such owner shall be bound by, and entitled to the benefits and burdens, as the case may be, of this Declaration during the period that he/she/they is/are an owner or occupant of such property.

5. **TERM.** This Declaration, and the Driveway Easements and covenants, restrictions, equitable servitudes and conditions granted and/or described herein are made in perpetuity.

6. **NON-EXCLUSIVE EASEMENTS.** The use of the Driveway Easements shall be non-exclusive, and the owner of each Lot shall have the right to make any use of the Driveway Area whatsoever in manner consistent with and in accordance with this Declaration.

7. **USE RESTRICTIONS.** Except as expressly provided in this Declaration and in any and all applicable governmental laws, statutes, and regulations, there shall be no restrictions governing an owner's use of his/her/their Lot.

8. **DISPUTE RESOLUTION; NOTICE**

8.1 Mediation. In the event of any disagreement or dispute arising under this Declaration, the owners of the Lots that are subject to this Declaration shall first attempt to resolve any such dispute or disagreement first through direct discussion between such owners, then, if such discussion shall be unsuccessful, by formal mediation using a mutually acceptable mediator within 30 days following written demand for mediation ("**Mediation Notice**") from any owner to the owner of the other parcel or lot, and, finally, if such mediation shall be unsuccessful, by either arbitration or the institution of any lawsuit in a court of competent jurisdiction. Notwithstanding Section 8.2 below, the Mediation Notice shall be delivered in person or by registered mail to the intended recipient owner at the address of his/her/their Lot that is subject to this Declaration and shall be deemed delivered immediately, in the case of personal delivery, and 72 hours after posting of any mailed Mediation Notice.

8.2 Notices. Except for the Mediation Notice, which shall be delivered as provided in Section 8.1 above, all notices and other communications under this Declaration shall be

in writing and shall be deemed duly given: (a) when personally delivered to the recipient; (b) when transmitted by facsimile device during normal business hours, provided such device is capable of generating a written confirmation of the transmission and receipt, and an original is deposited in first class mail with two days after such transmittal addressed as set forth below; (c) on the first day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (d) on the earlier of actual receipt or two days following deposit in United States registered or certified mail, postage prepaid, and return receipt requested, addressed to the parties as set forth below. All notices and other communications shall be addressed to the owner at his/her/their real property that is the subject of this Declaration. Any party may change its address for notices by giving written notice to the other party in the manner set forth above.

9. **BINDING; SUCCESSORS AND ASSIGNS.** This Declaration, the Driveway Easements granted herein, and the covenants described herein are intended as and shall be construed to be covenants running with the land. The easements and covenants described in this Declaration are for the burden and benefit of the owners of the Lots as described herein, and shall be binding upon and shall inure to the benefit of each owner, and the respective heirs, personal and legal representatives, assigns and/or successors in interest of each owner of a Lot. The provisions of this Declaration also shall be deemed to constitute equitable servitudes on the Lots. Any transferee of title to a Lot shall be deemed by acceptance of that title, to have automatically assumed all obligations under this Declaration with respect to the transferred property, but only to the extent those obligations accrue after the date of the transfer of title.

10. **GOVERNING LAW.** This Declaration shall be governed by the laws of the State of California.

11. **ASSIGNMENT.** An owner may not assign, hypothecate or otherwise transfer any of such owner's rights or obligations under this Declaration except by transfer of title to such owner's Lot. Any assignment of an owner's rights and obligations shall be void at its inception.

12. **ATTORNEYS' FEES.** If any legal action, arbitration or proceeding arising out of or relating to this Declaration is brought by any party to this Declaration, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted by the court or arbitrator, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

13. **RECORDING.** This Declaration shall be recorded in the official records of the Recorder of the County of Contra Costa for each Lot.

14. **SEVERABILITY.** If any term or provision of this Declaration is ever determined to be invalid or unenforceable for any reason, that term or provision shall be severed from this Declaration without affecting the validity or enforceability of the remainder of this Declaration.

15. **ENTIRE DECLARATION; AMENDMENT.** This Declaration constitutes the final expression and the complete and exclusive statement of the terms of the easements described above and supersedes all prior written or oral understandings regarding the matters contained herein. No modification of this Declaration shall be of any force or effect unless such modification is in writing and signed by all of the parties.

16. **CONDEMNATION.** In the event that all or any portion of either Lot shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the fee owner of the Lot whose property was so taken, as their interest may appear, and the other owner hereby waives and releases any right to recover any value attributable to the property interest taken except that if the taking materially affects the easement rights granted herein, the portion of the

award allocable to each such easement rights shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the respective owner owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement set forth herein shall expire or terminate based solely upon such taking.

17. **NO TERMINATION FOR BREACH.** Notwithstanding anything set forth herein to the contrary, no breach hereunder shall entitle any owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder, nor the enforcement of any provision hereof, shall defeat or render invalid the lien of any mortgagee or any deed of trust upon any Lot made in good faith and for value, but the Easements and covenants, conditions and restrictions granted and/or described herein shall be binding upon and effective against any owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

18. **NO WAIVER.** No waiver of any default of any obligation by any owner or other party bound hereunder shall be implied from any omission by the other owner(s), or other party with rights hereunder to take any action with respect to such default.

19. **NO AGENCY.** Nothing in this Declaration shall be deemed or construed to create the relationship of principal and agent or of limited or general partners, or of joint venturers or of any other association between the owners.

20. **ESTOPPEL CERTIFICATES.** Each owner of a Lot, within twenty (20) days of his/her/its receipt of a written request from the owner of the other Lot shall from time to time provide the requesting owner a certificate binding upon such owner stating: (a) to the best of such owner's knowledge, whether any owner is in default or violation of this Declaration and if so identifying such default or violation, and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

21. **BANKRUPTCY.** In the event of any bankruptcy affecting any owner or occupant of any Lot, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered a Declaration that runs with the land and that is not rejectable, in whole or in part, by the bankruptcy of such person or entity.

22. **NO PERSONAL LIABILITY.** Except as specifically provided for below, there shall be absolutely no personal liability of persons, firms, partnerships, corporations or entities who constitute an owner of a Lot, including, but not limited to, members, officers, directors, partners, employees or agents of a party hereto with respect to any of the terms, obligations, covenants, conditions, restrictions, and provisions of this Declaration. In the event of a default by an owner hereunder any non-defaulting owner who seeks recovery from a defaulting owner hereto shall look solely to the interest of such defaulting owner, and his/her/its successors and assigns, in his/her/its respective Lot for the satisfaction of each and every applicable remedy of the non-defaulting owner.

23. **COOPERATION.** Each owner hereto will, upon the reasonable request of the other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Declaration.

24. **TERMS GENERALLY.** The defined terms in this Declaration will apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any

pronoun will include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” when used in this Declaration will be deemed to be followed by the phrase “without limitation.” The words “approval” and “notice” when used in this Declaration will be deemed to be preceded by the word “written.” All references to “Exhibit” or “Exhibits” in this Declaration mean the exhibits attached hereto, the terms and conditions of which are made a part hereof. All references to “Section” or “Sections” in this Declaration mean the applicable section of this Declaration unless otherwise specified.

25. **COUNTERPARTS.** This Declaration may be signed in one or more counterparts, each of which shall constitute an original and collectively a single Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date written above.

DECLARANT:

Elaine Kayko Regan, Trustee of the Nawata Family Living Trust, 1993

Albert F. Nawata, Trustee of the Nawata Family Living Trust, 1993

Jean G. Fujii, Trustee of the Nawata Family Living Trust, 1993

Attachments to this Declaration:

- Exhibit A - Legal Description of the Carlson Blvd. Property
- Exhibit B - Legal Description of the San Pablo Ave. Property
- Exhibit C - Plat of the Driveway Easement Area and Easements
- Exhibit D - Legal Description of Easement Area

EXHIBIT A

LEGAL DESCRIPTION OF THE CARLSON BLVD. PROPERTY

Real property in the City of El Cerrito and County of Contra Costa, State of California, described as follows:

Lots 6 and 7 in Block 118, as designated on the map entitled "Richmond Annex Addition, Contra Costa Co., California", which map was filed in the office of the Recorder of the County of Contra Costa, State of California, on September 16, 1912 in Volume 8 of Maps at page 182.

Assessor's Parcel No.: 510-015-005

EXHIBIT B

LEGAL DESCRIPTION OF THE SAN PABLO AVE. PROPERTY

Real property in the City of El Cerrito and County of Contra Costa, State of California, described as follows:

All of Lot No. 23 Block 118 as designated on the map entitled "RICHMOND ANNEX ADDITION, CONTRA COST COUNTY CALIFORNIA:" which map was filed in the office of the Recorder of the Contra Costa, State of California, on September 16, 1912 in Volume 8 of Maps at page 182.

Assessor's Parcel No. 510-015-012

EXHIBIT C
PLAT OF DRIVEWAY EASEMENT AREA

EXHIBIT D
LEGAL DESCRIPTION OF EASEMENT AREA

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On _____ before me, _____
_____, a Notary Public, personally appeared _____
_____ who, proved to me on the basis of
satisfactory evidence to be the person(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his /her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: _____

(Typed or Printed)

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On _____ before me, _____
_____, a Notary Public, personally appeared _____
_____ who, proved to me on the basis of
satisfactory evidence to be the person(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his /her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: _____

(Typed or Printed)

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On _____ before me, _____
_____, a Notary Public, personally appeared _____
_____ who, proved to me on the basis of
satisfactory evidence to be the person(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his /her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: _____

(Typed or Printed)

(Seal)